IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 23209 of 2006(K)

AGAINST THE ORDER IN IA.2796/2005 IN
OS.592/2004 of ADDL.MUNSIFF COURT,CHERTHALA

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PETITIONER:

K.C.LONAPPAN, AGED 70 YEARS,
S/O.CHACKO, RESIDING AT THURUTHEL,
EZHUPUNNA, ERAMALLOOR, ALAPPUZHA.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
LAW SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. ST.RAPHEL,S CHURCH, EZHUPUNNA,
REPRESENTED BY ITS VICAR AND KAIKAR.

BY ADV. SRI.JIMMY JOHN VELLANIKKARAN FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the plaint filed by the 2nd respondent.

Ext.P2:- True copy of the written statement filed by the petitioner.

Ext.P3:- True copy of the suit in O.S. No.5/96.

Ext.P4:- True copy of the interlocutory application.

Ext.P5:- True copy of the objection filed by the petitioner.

Ext.P6:- True copy of the order in I.A.2796/05 in O.S.592/04

Respondents exhibits:-
Ext.R2(a):- True copy of order dated 9-1-06 in I.A.468/05 in O.S.5/1996 passed by the Subordinate Judge, Cherthala.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

W.P.© NO.23209 of 2006

Dated, this the 24th day of January, 2007

JUDGMENT

Petitioner is defendant and second respondent plaintiff in O.S.592/04 on the file of Munsiff Court, Cherthala. The suit was filed for recovery of possession of plaint shop room, contending that it was obtained by petitioner on lease after executing a lease deed in favour of respondent. The suit was filed by respondent Church represented by Vicar and two kaikars of the Church. In the written statement, petitioner though admitted execution of lease deed, resisted the suit contending that suit is not maintainable as plaintiff has no authority to institute the suit. Petitioner filed Ext.P4, I.A.2796/05 an application under Order VI Rule 17 of Code of Civil Procedure to amend the written statement. The amendment sought for is to

incorporate paragraph 5(a) in the written statement to the effect that signatories to the plaint have no right to institute the suit and O.S.5/96 is pending before Sub Court, Cherthala which was instituted contending that the property belongs to the Trust and before a decision is arrived in that suit, plaintiff is not entitled to the decree sought for. Respondents filed an objection contending that amendment sought for cannot be allowed as earlier another suit was filed for eviction of petitioner and it was settled and pursuant to the settlement a fresh lease deed was executed and therefore petitioner is not entitled to raise the contradictory contentions by amendment of the written statement. Under Ext.P6 order, learned Munsiff dismissed the application. This petition is filed under Article 227 of Constitution of India challenging Ext.P6 order, contending that for a just decision of the case learned Munsiff should have allowed the application.

2. Learned counsel appearing for petitioner and respondents were heard.

3. The argument of learned counsel appearing for petitioner relying on the decision of Apex Court in **Baldev Singh & Others v. Manohar Singh & another (JT 2006 (7) SC 139)** was that by amendment petitioner has only elaborated the defence which was already taken in the written statement and the rigour which is applicable to an application for amendment of the plaint is not there, when an application is filed to amend the written statement and even inconsistent or contradictory plea could be raised in a written statement or could be introduced by amendment of a written statement and in such circumstance, learned Munsiff should have allowed the application. It was pointed out that even in the original written statement, it was contended that persons who instituted the suit have no authority to file the suit or seek relief and by the amendment sought for reasons for that

plea are elaborated and in such circumstance, amendment should have been allowed. Learned counsel appearing for respondents argued that petitioner sought to introduce a totally contradictory case by amendment and when respondent is admittedly a lessee, who obtained possession of the shop room from respondent, he is not entitled to dispute the title and file an application to amend the written statement disputing the title or right of persons who granted lease and in such circumstance, learned Munsiff rightly dismissed the application and there is no reason to interfere with the discretion rightly exercised by the trial court, in exercise of extra ordinary jurisdiction of this court under Article 227 of Constitution of India.

4. Order VI Rule 17 of the Code empowers the court to permit the parties to amend the pleading if it is necessary for a just decision of the case. The court has a wide discretion to allow or not to allow the application, depending on

whether it is necessary for a just decision of the case. The rigour applicable to the amendment of a plaint, is not there when an amendment is sought in written statement. The court has to allow the amendment if for determining the real controversies raised between the parties, it appears to the court just and necessary. While considering the question, court has to bear in mind that a defendant is entitled to raise even contradictory and inconsistent defences in the written statement. As held by Apex Court in **M/s.Modi Spinning and Weaving Mills Co.Ltd v. M/s.Ladha Ram & Co. Ltd (1976) 4 SCC 320)** even an inconsistent plea can be raised by the defendant by amending the written statement. Therefore for the reason that amendment sought for is inconsistent, it is not to be rejected, if for a just decision of the case, it is necessary. Relying on the same decision learned counsel appearing for respondents argued that a

defendant is not entitled to displace the plaintiff completely from the admissions made in the written statement, if such an amendment is allowed, plaintiff will be irreparably prejudiced by being denied the opportunity of extracting admission from defendants. Their Lordships held that if the result of allowing the application would be denying the plaintiff to extract the admission in the written statement, which is originally made, it is a ground to deny amendment sought for. But by amendment sought for in this case, defendant is not displacing plaintiff from any of the admissions originally made in the written statement. What was sought to be introduced is a plea that, there is a suit pending between the Church and the Trust and before the court decides that question, respondent is not entitled to the decree sought for. The fact that building was obtained by petitioner from respondent Church or that petitioner executed a lease deed in favour of

respondent, pursuant to the compromise in the earlier suit, was not sought to be taken away by the proposed amendment. In such circumstances, respondent, inspite of the amendment if allowed, could make use of whatever admissions are there in the written statement and therefore on that ground amendment sought for cannot be rejected. The argument of learned counsel appearing for respondent was that there is no bona fides in the plea as what was contended was that petitioner was informed that a suit is pending against the Church setting up a Trust and in that suit an amendment application was filed changing the plea of Trust originally made and in such circumstances, there is no necessity to allow the amendment sought for, based on that plea. The question whether petitioner, who is a lessee who obtained possession of the shop room from the signatories to the plaint, is entitled to challenge title of the lessee is a question to be considered by learned Munsiff, while

considering the defence set up. The merits of the contentions sought to be introduced by the amendment, is not to be considered while considering the question whether amendment sought for is to be allowed. Respondent is definitely entitled to raise a contention before the trial court that petitioner, being a lessee who executed a rent deed in favour of the signatories to the plaint, is not entitled to dispute their right or the title and therefore the plea introduced by the amendment need not be considered by letting evidence on the right of the so called trustees. That question is to be decided in the suit. But for a just decision of the case, it is necessary to permit petitioner to amend the written statement as sought for, in I.A.2796/05.

Writ Petition is allowed. Ext.P6 order is quashed. I.A.2796/05 is allowed. Learned Munsiff is directed to dispose the suit as expeditiously as possible. It is made clear that

learned Munsiff need not wait for the decision in the case pending in O.S.5/96, for disposing the suit.

M.Sasidharan Nambiar
Judge

Tpl/-